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Supreme Court Of The United States

OCTOBER TERM, 1975

No. 75-1512

LARRY FRIERSON, JIMMIE MACK, WILLIE LEE PETERSON, WILLIAM FRIERSON, BURNELL FRANKLIN and ALFRED BRADLEY, on their own behalf and on behalf of all others similarly situated, PETITIONERS,

versus

JOHN C. WEST, Governor of South Carolina; ARCHIE H. CHANDLER, SR., Magistrate of Lee County; R. B. McLENDON, Magistrate of Lee County; LISTON TRUESDALE, Sheriff of Lee County; and O'DELL CORBETT, Chief of Police of Bishopville, South Carolina; individually, in their official capacities and the successors in the interests of each, RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF RESPONDENT, O'DELL CORBETT, IN OPPOSITION

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OPINIONS BELOW

The opinion of the Court of Appeals, not yet reported, is set out in the Appendix of Petition at 1a. The opinions of the District Court are also unreported and appear in the Appendix of Petition at 3a and 8a.

JURISDICTION

This Respondent does not question the Court's jurisdiction in this proceeding.

QUESTIONS PRESENTED

I

Whether, following the convening of a Three Judge Court, such Court properly refused to allow petitioners to further amend their amended complaint to include municipal ordinances of the Town of Bishopville, which are only of local import?

II

Other questions presented by the Brief of Respondent, John Carl West, are respectfully adopted as is the Brief of the said John Carl West.

STATEMENT OF THE CASE

Petitioners are Negro residents of South Carolina and, with the exception of Burnell Franklin, who is a resident of Kershaw County, are residents of Lee County, South Carolina. In the Amended Complaint, petitioners contended that four South Carolina statutes relating to disorderly conduct and breach of the peace were vague and over broad and failed to give adequate notice of prescribed conduct and encourages arbitrary and eractic arrest and convictions in violation of their rights and those of their class secured by the First, Sixth and Fourteenth Amendments of the Constitution of the United States.[1]

1. The Statutes involved are set out in the Appendix at 31A.

FILED

Petitioners further claimed that requiring the defendants in Magistrates Court to have their cases tried before Magistrates not required to have legal training violated their Constitutional Rights. The respondent, O'Dell Corbett, has never prosecuted anyone for disorderly conduct or like offenses except before the City Recorder, who is an attorney, and brings all of the Town of Bishopville cases for disorderly conduct and related offenses under the provision of the Municipal Code of the Town of Bishopville, South Carolina. The only plaintiff ever arrested by O'Dell Corbett or his deputies for disorderly conduct was Burnell Franklin, a resident of another town and county, and he was acquitted by the City Recorder.

Three of the four statutes challenged by the petitioners refer directly to powers of Magistrates in certain cases of disorderly conduct and only one of the challenged statutes does not involve itself with magistrates' authority. After once amending their complaint, petitioners thereafter attempted to further amend their complaint by specifically attacking Municipal Ordinances of the Town of Bishopville, South Carolina. The District Court in its Order of November 20, 1974, denied said motion to amend. Said Order is set forth at 3a in the Appendix of the petition.

The District Court dismissed the challenge to the State statutes on the grounds that petitioners lacked standing as to all causes of action and additionally, as to Corbett, on the ground that the pleadings considered in light of the Interrogatories, Affidavits and Stipulations did not state a cause of action against him.

The opinion of the Three Judge District Court dismissing the Complaint was affirmed by the Court of

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Appeals by Order of January 20, 1976, which states "The District Court of Three Judges dismissed this action upon the ground that the plaintiffs fail to satisfy the threshold requirement that an actual case or controversy existed." The order further stated that the Court of Appeals agreed with the conclusion of the District Court.

ARGUMENT

I

It was proper for the Three Judge Court convened for the purpose of determining the legality of criminal trials by Magistrates in South Carolina and to determine the constitutionality of certain statutes of state wide import to, in its discretion, refuse to allow an amendment to include the challenge to municipal ordinances of the Town of Bishopville, South Carolina.

It appears that petitioners, in stating their questions presented, present as question number four (4), whether the Three Judge Court properly refused to remand to a single Judge Court a claim cognizable by the District Court for the reason that issues raised in the Complaint were required to be heard by three Judges. This question is not met in the arguments, however. Argument Number Four (4) of the petitioners' petition, which is the only argument which could have reference to that question presented, commits itself to the argument of whether the lower court abused its discretion in denying the motion to amend to attack the constitutionality of town ordinances. It is respectfully suggested that Question Number Four (4) presented and Argument Number Four (4) are not identically the same point and petitioners seem to

tacitly admit that in absence of their requested amendment being granted, that they have not stated a cause of action against the respondent, O'Dell Corbett.

It is well established that the allowance or refusal to permit an amendment lies in the discretion of the trial court and is not subject to review except for abuse of that discretion. *Minnesota Mining and Manufacing Company vs. Superior Insulating Tape Company,* 284 Fed. 2nd 478, (Eighth Circuit, 1960) and *Komie vs. Buenler Corporation,* 449 Fed. 2nd 644, (Ninth Circuit, 1971). As stated in the *Minnesota Mining and Manufacturing Company vs. Superior Insulating Tape Company, supra,* "[T]he burden of showing abuse of discretion on the trial court is a heavy one."

The petitioners in their complaint questioned the constitutionality of certain state statutes. One of these statutes is a statute of state wide import involving disorderly conduct. The other three statutes involve the rights and duties of magistrates in connection with persons who are committing acts considered to be disorderly. The complaint further attacks the magisterial system itself, asking, in effect, that all magistrates without minimal training be relieved from office. Named as a party defendant, both in his official capacity and individually, was O'Dell Corbett, the Chief of Police of the Town of Bishopville, South Carolina. It was determined that the Town of Bishopville prosecuted its cases under its municipal code before a City Recorder who was an attorney. After this, the petitioners belatedly attempted to bring into question the constitutionality of local municipal ordinances. The issue of the constitutionality of a local ordinance is a matter for a single court rather than a

three judge court. *Moody vs. Flowers*, 387 U.S. 97, 87 Supreme Court 1544, 18 Lawyers Edition 643, (1967); *Board of Regents of the University of Texas System vs. New Left Educational Prog*, 404 U.S. 541, 92 Supreme Court 652, 30 Lawyers Edition 697, (1972). By having a three judge court hear challenges to statutes of state w de import and sing'e judge courts hear challenges to statutes of local import, the balance of protecting states and of minimizing the burden that the three judge court places upon the federal judiciary is met. *Board of Regents of the University of Texas System vs. New Left Ed. Prog., supra.* The lower court in the case now under consideration properly exercised its discretion in refusing to allow an amendment to the complaint to challenge local mun cipal statutes. The Court properly found that to allow such an amendment would add nothing materially to the determination of the issues involved. This case, as above stated, is primarily one attacking certain state wide statutes concerning disorderly conduct and the applicat on of those statutes and other statutes by magistrates of the State of South Carolina who do not have certain minimal training requirements. To interject into this case, municipal ordinances which are prosecuted and tried before a City Recorder, who is an attorney, would be to imply allow an amendment to unnecessarily broaden the scope and attack of the amended compla nt.

CONCLUSION

For the foregoing reasons and in addition to the reasons set forth in the Brief of the respondent, John Carl West, the respondent, O'Dell Corbett, submits that the petitioners' Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Bishopville, S. C. and
Individually